THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.2277 of 1995

Dated 04-08-2006

Between:
P.Veerender.

..... PETITIONER

AND

The Director, Nizams Institute of Medical Sciences, Panjagutta, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.2277 of 1995

O R D E R:

Promotion of respondents 2 and 3, as Medical Record Technicians in the Medical Department of the Nizam's Institute of Medical Sciences, is under challenge in this writ petition.

According to the petitioner, he was initially appointed on 04-10-1989 on temporary basis and was thereafter appointed on a regular basis, in the scale of Rs.910-1625, with effect from 01-10-1990. His probation was declared on 02-01-1993. The petitioner contends that the post of medical record assistant is a feeder post for promotion to the post of medical record technician and, while he was an eligible candidate in the department, the first respondent had, instead, appointed respondents 2 and 3, who were working as secretarial assistants in other departments of the institute, as medical record technicians, ignoring his claim.

The second respondent was appointed as medical record assistant on 07-05-1987 and was promoted as secretarial assistant on 01-12-1989, his probation was declared on 01-12-1991 and since he possessed the qualification required for being appointed as a medical record assistant, his option was sought for and on his exercising his option, he was absorbed as a medical record assistant on
12-10-1992 and two months thereafter, was promoted on
12-12-1992 as a medical record technician.

Sri P.V.Subrahmanya Sharma, learned counsel for the second respondent, would state that, since the petitioner herein has not chosen to challenge the absorption of the second respondent as a medical record assistant, it was not open for him to contend that the second respondent should not have been promoted as a medial record technician. Learned counsel would state that since the second respondent belongs to the medical records department on his absorption as a medical record assistant on 12-10-1992, he was promoted as a medical record technician only as a candidate from and within the department and not from other departments. Learned counsel would submit that, in any event, the

petitioner has not chosen to challenge the promotion of the second respondent as a medial record technician on 12-12-1992 for more than two years till the writ petition was filed on 09-02-1995, and, inasmuch as there was no whisper, let alone, any explanation for the undue delay in approaching this Court beyond two years the writ petition is hit by laches.

Sri C.Srinivas Baba, learned counsel for the petitioner, would contend that the normal rule of limitation like that of a Civil Court should be three years and since the delay in this case is less than three years, this Court ought not to dismiss the writ petition on the ground of delay and laches.

The submission of Sri P.V.Subrahmanya Sarma, learned counsel for the second respondent, that the writ petition is liable to be dismissed on the ground of laches merits acceptance. While the jurisdiction of this Court under Article 226 of the Constitution of India is discretionary, belated writ petitions are, normally, not entertained, unless this Court is satisfied that the delay in approaching this Court has been satisfactorily explained. As stated above, the jurisdiction of this Court under Article 226 of the Constitution of India is discretionary and among the grounds on which this Court would refuse to exercise its discretion is on the ground of laches. In this context, it will be useful to refer to **State of M.P. v. Nandlal Jaiswal**[1], wherein the Apex Court observed thus:

"……It is well settled that the power of the High Court to issue an appropriate writ under Art. 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High-Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High court is invoked unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction……"

In a belated challenge of promotions in proceedings under Article 226 of the Constitution of India, the period of limitation prescribed for civil suits cannot, automatically apply. The affidavit, filed in support of the writ petition, is silent in this regard. In the absence of any explanation for the delay, let alone satisfactory explanation, I see no reason to exercise the discretion conferred under Article 226 of the Constitution of India and interfere with the promotions of respondents 2 and 3 as medical record technicians.

The writ petition is dismissed. No order as to costs.

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04-08-2006

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[1] AIR 1987 SC 251